IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 174 of 2005
With
CIVIL APPLICATION No. 3348 of 2005
In APPEAL FROM ORDER No. 174 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TORRENT POWER AEC LTD - Appellant(s)
Versus
KIRAN BROTHERS - Defendant(s)

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Appearance :
MR KB PUJARA for Appellant(s) : 1,
MR BHARAT JANI for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 18/04/2006

ORAL JUDGMENT

1. Torrent Power AEC Limited (formerly known as the Ahmedabad Electricity Company Limited), appellant-original defendant has filed this appeal from order

against the judgment and order dated 4.3.2005 passed by the learned Judge, City Civil Court, Ahmedabad in Civil Suit No.4831 of 2001. By the impugned judgment and order the learned Judge has held that though Ahmedabad Electricity Company Limited has made assessment of 36 months of Rs.2,36,148/- of the plaintiff for supply of miscellaneous charges. However, the Electricity Company has to make assessment of six months and, therefore, the learned Judge has stated that Rs.58,000/- is sufficient amount for reconnection of electric supply and hence the learned Judge ordered that the defendant Electricity Company is restrained to cut of electric supply of plaintiff's service till final hearing of the suit.

2. The said Appeal from Order was originally filed on 14.3.2005. Along with the said Appeal from Order, a Civil Application No.3348 of 2005 was also filed praying for stay of the aforesaid order. The said application was filed on 15.4.2005.

3. This Court (Coram: K.S.Jhaveri, J.) by his order dated 26.4.2005 pleased to admit the appeal from order, and as regards civil application is concerned made rule

returnable on 9.5.2005 and ad-interim relief was granted in terms of para 3(a) till then i.e., staying of the order of the learned Judge, City Civil Court, Ahmedabad. Today the matter has been heard by this Court for confirming the interim relief.

4. I have heard Mr.K.B.Pujara, learned advocate for the appellant and Mr.B.G.Jani, learned advocate for the respondent

5. Mr.Pujara, learned advocate has invited my attention to the fact that as in this case the respondent-original plaintiff was using electrical energy being supplied by the defendant vide Service No.222943 which is in the name of 'M/s.Camy Plast Corporation' for commercial purpose. The said service was inspected by the defendant on 18.1.2001. The Electricity Company found serious malpractices and theft of energy were found. The meter cover rod seals were found broken and inspection memo was prepared in presence of consumer's representative and it was signed by him. A copy of the same was also given to him. At the request of the consumer, the supply was not disconnected. Thereafter the assessment as per norms was carried out for a sum

of Rs.2,36,148/- after considering the representation made by the consumer and other relevant circumstances which the consumer failed to pay. Therefore the supply was disconnected. Thereafter the consumer paid Rs.58,000/- on 1.10.2001 on ad-hoc basis and assured to make payment of balance amount and thereafter the supply was restored.

6. However, thereafter in stead of making of payment of balance amount, the respondent approached the City Civil Court on or about 18.10.2001 by way of Civil Suit No.4831 of 2001 praying for refund of Rs.58,000/- together with 18% interest. The plaintiff also prayed for permanent injunction against disconnection. The respondent also preferred notice of motion application for temporary injunction. The learned trial Judge granted ex-parte ad interim injunction against disconnection.

7. However, in the order it was made clear that the defendant Electricity Company is not restrained from assessing or issuing appropriate amount for Diversion of Energy (DOE) in question. The said order was passed on 18.10.2001.

8. Thereafter in the said matter, the defendant Electricity Company filed reply to the said injunction application and Para 7(A) & 7(B) which are relevant has been set out like this:

> “7(A) The Service Number 222943 was visited by the concern officers and/or staff of Meter Unit Section of City Zone of the defendant Co., on 18/01/01 and the irregularities were found with the said service and hence the detailed report was prepared by way of inspection slip and the original of which was given to the plaintiff. The inspection slip and disconnection done by the defendant Co., is correct legal and valid.
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> “7(B) Thus the plaintiff has tempered with the Service Apparatus and committed theft of energy as stated in the inspection slip of the above service, hence the assessment has been carried out by the defendant Co., of Rs.2,36,148/-. The details of assessment is given in the assessment sheet, the copy of which is produced with the list with this reply. The assessment done by the

defendant Co., is correct legal and valid and the plaintiff is bound to pay the same, but the plaintiff has paid only Rs.58,000/- as an ad-hoc payment towards the above assessment on 01/10/01 and assured to pay the balance amount of assessment but the plaintiff did not pay the remaining amount of Rs.1,78,148/- inspite of the undertaking given by the plaintiff. Thus the plaintiff has committed breach of the provisions of the Indian Electricity Act, 1910, Indian Electricity Rules 1956 and conditions of supply of the defendant Co."

9. The said reply was filed on 18.4.2003. When the matter was heard by trial court on 4.3.2005 the trial court passed the following order.

"Heard the learned advocate for the plaintiff and defendant Co.

It appears that defendant Co's officer visited the plaintiff's premises on 18.1.01 thereafter cut off electric supply of the plaintiff. After taking Rs.58,000/- A.E.C. Co., reconnected Ele.supply.

The plaintiff made assessment of 36 months of Rs.2,36,148/-. But as per condition no.12 of supply and misc. charges Co., has to make assessment of six months. Therefore to my mind Rs.58,000/- is sufficient amount for reconnection of Electric supply.

Hence defendant Co's is hereby restrained to cut of Electric supply of plaintiff's service no.222943 till final hearing of the suit.

So N.M., accordingly stands disposed off with no order as to costs."

10. Being aggrieved and dissatisfied with the said order, this appeal from order has been filed before this Court on 14.3.2005. The said appeal from order was admitted and in Civil Application No.3348 of 2005 the Court has granted stay regarding impugned order.

11. Mr.K.B.Pujara, learned advocate for the appellant states that, in this case, admittedly, in view of the earlier proceedings, it was decided that original

plaintiff should pay Rs.58,000/- and the disconnection which was there to be reconnected by the AEC company. Thereafter plaintiff has paid Rs.58,000/- and he got the connection.

12. Thereafter present suit has been filed to recover the said Rs.58,000/- with 18% interest, there is a clearly an abuse of process of law. When the interim order passed by the City Civil Court on 18.10.2001 the plaintiff obtained stay for disconnection. However, the learned Judge has made it clear that defendant company can assess regarding diversion of energy. The plaintiff agreed with the said direction when the learned Chamber Judge passed the order.

13. Thereafter defendant filed reply and pointed out that certain irregularities were found with the said service hence, detailed report which was given to the plaintiff, the plaintiff has not challenged the same in this behalf. It was also found that the plaintiff has tempered with the service apparatus and committed stealing of energy as stated in the inspection slip of the above service, hence the assessment has been carried out by the defendant Co. of Rs.2,36,148/-. Out

of that, plaintiff has paid only Rs.58,000/- and therefore Rs.1,78,148/- is still remains due and payable by the plaintiff, this was stated in April, 2003, whereas we are in April 2006.

14. The learned advocate for the appellant has also invited my attention to the Division Bench judgment of this Court in the case of Kiran Industries, Mehsana Vs. Gujarat Electricity Board, Baroda and another reported in 1995(2) GLH 1 where the Division Bench has held that no ex-parte ad interim relief against disconnection of electricity supply for non-payment of a bill can be granted except in rarest of rare case. The Division Bench further observed that in no case any interim relief against disconnection of electricity supply without payment of the bill under challenge should be granted and consumer should be ordered to pay the bill in question in full to the G.E.B., for claiming the interim relief against disconnection for its non-payment and payment to be treated as deposit by G.E.B.

15. In view of this the order of the trial court though it was pointed out that the defendant company

has made an assessment of Rs.2,36,148/-, the learned Judge has without assigning any reasons stated that Rs.58,000/- is sufficient amount for reconnection of electricity supply.

16. Mr.Jani, learned advocate has opposed the said civil application and contended that stay has been granted by this Court may be vacated in this behalf and the trial court has passed a perfectly just and legal order. On the other hand, Mr.Pujara for AEC contended that the respondent-original plaintiff, in the first place, obtained connection on condition that he will pay Rs.58,000/- and he has paid Rs.58,000/- to the Electricity Company and the Company has reconnected the power supply. Thereafter he filed suit for refund of the said amount and therefore this is clearly an abuse of process of law. He further submitted that not only that the City Civil Court initially granted injunction on 18.10.2001, the learned Judge has made it clear that the defendant is not restrained from assessing or issuing appropriate amount for diversion of energy, at that time, he has also agreed with the said condition, because he is more interested for reconnection of his power supply. The respondent-original plaintiff has

tempered with the meter and now by any chance he does not want to pay the amount in question.

17. When this Court was hearing the civil application which was heard at length, this Court has therefore requested the learned advocate for the respondent-original plaintiff that as this Court has invested sufficient time in hearing the civil application No.3348 of 2005 in connection to the fact that as to whether the impugned order dated 4.3.2005 passed below notice of motion below Exh.5 & 6 in Civil Suit No.4831 of 2001 filed before the City Civil Court at Ahmedabad, during the pendency of the final disposal of appeal be stayed or not. As the civil application raises question which will ultimately affect the appeal from order and once the civil application disposed of then nothing remains in the appeal from order and, therefore, this Court requested Mr.Jani to hear entire appeal from order in this behalf. Mr.Jani has objected to this part. However, looking to the fact that this Court has gone through the entire evidence on record and heard Mr.K.B.Pujara, learned advocate for the appellant and Mr.B.G.Jani, learned advocate for the respondent at length on confirming the interim relief,

therefore this Court decided to dispose of appeal from order finally.

18. The impugned order of the trial court is quashed and set aside. The respondent-original plaintiff is directed to pay remaining amount Rs.1,78,148/- without prejudice to the rights and contentions in the suit. This amount will be treated as ad-hoc deposit, and if the respondent-original plaintiff succeeds in the matter, the same may be adjusted in this behalf.

19. With the aforesaid directions, this appeal from order is allowed and disposed of with no order as to costs.

20. In view of this, Civil Application No.3348 of 2005 is also disposed of. Rule is made absolute with no order as to costs.

(K.M. Mehta, J.)

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